NEUTRAL CITATION
2026:GUJHC:23883

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/CRIMINAL APPEAL NO. 412 of 2005
With
R/CRIMINAL APPEAL NO. 715 of 2005
With
R/CRIMINAL APPEAL NO. 1139 of 2005

FOR APPROVAL AND SIGNATURE:

HONOURABLE MS. JUSTICE GITA GOPI

==========

Approved for Reporting	Yes	No

==========

ARVINDSINGH GANGASINGH SOLANKI & ORS.
Versus
THE STATE OF GUJARAT

==========

Appearance in CR.A 412/05:
MR PRATIK BAROT with MS SMRITI K CHAUHAN (17343) for the Appellant(s) No. 1,2,3
MS JYOTI BHATT, APP for the Opponent(s)/Respondent(s) No. 1

Appearance in CR.A 715/05:
MR PRATIK BAROT with MS SMRITI K CHAUHAN (17343) for the Appellant(s) No. 1
MS JYOTI BHATT, APP for the Opponent(s)/Respondent(s) No. 1

Appearance in CR.A 1139/05:
MS JYOTI BHATT, APP for the Appellant(s) No. 1
MR PRATIK BAROT with MR KI KAZI for the Opponent(s)/Respondent(s) No. 1,2,3,4

==========

CORAM:**HONOURABLE MS. JUSTICE GITA GOPI**
Date : 25/03/2026
COMMON JUDGMENT

1. Criminal Appeal no.412 of 2005 was filed by the appellants – original accused nos.1, 2 and 3, while Criminal Appeal no.715 of 2005 was filed by the appellant – original accused no.4 and Criminal Appeal no. 1139 of

NEUTRAL CITATION
2026:GUJHC:23883

2005 had been filed by the State for enhancement of the sentence. The judgment and order of conviction and sentence dated 28.02.2005 passed by the learned Additional Sessions Judge, Ahmedabad City in Sessions Case no.51 of 2004 has been impugned. The accused persons were charged under Section 399 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC" for short), Section 25(1) of the Arms Act and Section 135 of the Bombay Police Act.

1.1 The accused nos.1 to 3 were sentenced to undergo four years rigorous imprisonment with fine of Rs.2,500/- and in default of payment of fine, to further undergo rigorous imprisonment of three months for the offence punishable under Section 399 of the IPC. The accused nos.1 to 3 were further sentenced to undergo two years rigorous imprisonment for the offence punishable under Section 25(1B)(a) of the Arms Act, and also sentenced to undergo one year rigorous imprisonment for the offence punishable under Section 135(1) of the Bombay Police Act. The sentences for each accused were ordered to run concurrently.

NEUTRAL CITATION
2026:GUJHC:23883

1.2 The accused no.4 was sentenced to undergo two years rigorous imprisonment with fine of Rs.2,500/- for the offence punishable under Section 399 of the IPC, and in failure to pay the fine, to undergo rigorous imprisonment of three months.

2. Facts, in nut-shell, are that on 02.06.2003, FIR no. I-7/2003 came to be registered with District Crime Branch at Ahmedabad for the offence punishable under Section 399 of the IPC, Section 25(1) of the Arms Act and Section 135 of the Bombay Police Act. It is the case of the prosecution that the District Crime Branch had received information that the named accused persons will assemble opposite to Natraj Hotel, Naroda Patiya three cross roads between 06:00 p.m. to 09:00 p.m. on 02.06.2003. As per the information, they were to meet there to hatch conspiracy to commit dacoity.

2.1 It is the case of the prosecution that at about 08:45 p.m. on 02.06.2003, three persons got down from an auto rickshaw, other two persons came from the other side walking and all assembled on the main road opposite to

NEUTRAL CITATION
2026:GUJHC:23883

Natraj Hotel at Naroda Patiya. As soon as the accused persons assembled, the District Crime Branch apprehended them alleging that the accused were armed with weapons and hence, were preparing to commit dacoity.

2.2 The police arrested them under the accusation that they were preparing to commit offence of dacoity at Sahid Vir Petrol Pump at Dehgam. According to the prosecution, the accused were arrested from the open main road going to Dehgam, where from the said petrol pump was about 28 kms. away.

2.3 The charge-sheet was filed. As the offences in the charge-sheet were exclusively triable by the Court of Sessions, the learned Magistrate under Section 209 of the Code of Criminal Procedure, 1973 committed the case to the Hon'ble Sessions Court by an order dated 11.09.2003 and the same was registered as Sessions Case no.51 of 2004. Thereafter, the charge was framed on 30.06.2004. The accused not having pleaded guilty, the case was opened by the prosecution.

NEUTRAL CITATION
2026:GUJHC:23883

3. Heard learned advocate Mr. Pratik Barot with learned advocates Ms. Smriti Chauhan and Mr. K.I. Kazi for the accused and Ms. Jyoti Bhatt, learned APP for the State.

4. Mr. Pratik Barot, learned advocate for the accused has submitted that the prosecution case suffers from serious infirmities and inconsistencies and the evidence led by the prosecution witnesses does not inspire confidence so as to sustain the conviction recorded by the learned Trial Court. Mr. Barot submitted that not a single penny was recovered from the present appellant as accused, nor the accused were apprehended from any private vehicle while moving towards the direction of the said petrol pump to cover a distance of about 28 kms. from the Natraj Hotel, which makes the prosecution story highly doubtful. Mr. Barot submitted that looking to the deposition of the witnesses, especially the police personnels, huge contradictions have arisen as to the arrival of the accused at the so called Natraj Hotel and the statement of each new witness differs from that of the previous witness and time of arrival of the accused at the alleged place was itself uncertain. Learned advocate

NEUTRAL CITATION
2026:GUJHC:23883

Mr. Barot submitted that time factor becomes very important in such a case and a big time gap of more than five hours can be seen from the deposition of the Investigating Officer and the Panch at the so-called petrol pump. Learned advocate Mr. Barot further submitted that according to the deposition of PW6, the Investigating Officer was present at the office of the Crime Branch between 10:30 a.m. to 03:00 p.m. on 03.06.2003. Panchnama was completed at the petrol pump by 12:30 on 03.06.2003. Hence, creates doubt to the Panchnama drawn at the petrol pump on 03.06.2003 which was at a distance of 28 kms. from the office of Crime Branch. Learned advocate Mr. Barot submitted that out of two Panchas for the recovery of Muddamal articles, one turned hostile and the second one was not examined. This again creates doubt as to the credibility of the witnesses. Moreover, what weapon was recovered from which of the accused does not get clear from the deposition of the Panch. Learned advocate Mr. Barot stated from the deposition of the Panchas that only their signatures were obtained on the plain papers, again creating doubt in the story of the prosecution. Learned

NEUTRAL CITATION
2026:GUJHC:23883

advocate Mr. Barot submitted that the deposition of the complainant itself differs from the deposition of the other police witnesses about the number of vehicles used in the raid and that except one, no other independent witness was examined. Learned advocate Mr. Barot submitted that if the deposition of the complainant as leader of raiding team is be believed, then the entire Panchnama at the so called Natraj Hotel itself would prove no case of conviction and if the Investigating Officer is believed, the entire complaint and the Panchnama becomes invalid. If PW6 is believed, the entire process of Panchnama at the petrol pump turns invalid. Thus, in the present case, if deposition of one is considered, the other stands wrong thus creating a big doubt to place reliance on the said witnesses.

4.1 Learned advocate Mr. Barot submitted that the fifth accused is just a creation of the police to make the evidence stand under Section 391 IPC. The accused were neither apprehended from the place of offence, nor were found going or moving in the direction of the so called petrol pump. It is submitted that thus, the ingredients of

NEUTRAL CITATION
2026:GUJHC:23883

Section 399 IPC are not established. The evidence on record is insufficient to bring home the guilt of the accused and therefore, the conviction recorded by the learned Trial Court Judge cannot be sustained in the eyes of law. It is, therefore, submitted that the appeals preferred by the accused deserve to be allowed and the impugned judgment and order of conviction and sentence passed by the learned Trial Court Judge may be quashed and set aside.

4.2 Advocate Mr. Barot for the accused further stated that the prosecution was required to prove the case of preparation for dacoity by five or more persons and to drag the case under Section 399 of IPC illusion of the fifth person present at the spot had been created by the leader of the trapping party and his team members and thus, submitted that unless the vital ingredients necessary for the preparation for dacoity are not proved by the prosecution, no conviction can follow.

4.3 Learned advocate Mr. Barot has relied upon the decisions in the case of (i) **Mahabir Singh & Ors. vs. State of Haryana**, High Court of Punjab and Haryana dated

NEUTRAL CITATION
2026:GUJHC:23883

14.03.2023, (ii) **Sukhlal Banshi Lodhi & Anr. vs. State of Madhya Pradesh**, High Court of Madhya Pradesh dated 26.09.1997, (iii) **Mohan Singh & Anr. Vs. State of Punjab**, High Court of Punjab and Haryana dated 30.11.2022, (iv) **Kailash Dheemar vs. State of Madhya Pradesh**, High Court of Madhya Pradesh dated 06.01.2022, (v) **Santosh Kumar and Etc. vs. State of Chhattisgarh**, High Court of Chhattisgarh dated 13.01.2006, (vi) **Subhash Hariram Rajbhar & Ors. vs. The State of Maharastra**, High Court of Maharastra dated 05.06.2007, (vii) **Lal Bahadur Choudhary and Anr. vs. State of Bihar**, High Court Judicature at Patna dated 27.08.2025, (viii) **Latifnagodar Hayat Sindhi & Anr. vs. State of Gujarat**, High Court of Gujarat, 2024 (0) AIJEL-HC 248472, (ix) **Jasbir Singh @ Javri @ Jabbar Singh vs. State of Haryana**, High Court of Punjab and Haryana, 2015 (0) AIJEL-SC 56420, (x) **Chaturi Yadav v. State of Bihar**, 1979 (0) AIJEL-SC 4988, (xi) **Shaikh Mohammed Naushad v. State of Gujarat**, 2025 (0) AIJEL-HC 251336, and (xii) **Hari S/o Chandran v. The State of Kerala**, High Court of Kerala at Ernakulam dated 14.1.2026.

NEUTRAL CITATION
2026:GUJHC:23883

5. Ms. Jyoti Bhatt, learned APP for the State submitted that the offence was proved against the accused persons, and looking to the gravity and seriousness of the offence, the sentence imposed by the learned Trial Court is inadequate and does not commensurate with the nature of the crime committed by the accused. Ms. Bhatt, learned APP has submitted that the present case is not the one, wherein any leniency ought to have been shown to the accused persons. The evidence on record clearly establishes that the accused persons had hatched a criminal conspiracy and were armed with deadly weapons with the intention of committing the offence. Such conduct reflects the serious nature of the crime and warrants a stringent approach while imposing punishment. Ms. Bhatt, learned APP has submitted that the learned Trial Court Judge has erred in showing undue leniency to the accused persons while determining the quantum of sentence. Such leniency is not in the interest of justice, particularly in view of the gravity and circumstances of the offence. Ms. Bhatt, learned APP has further submitted that the learned Trial Court Judge has

NEUTRAL CITATION
2026:GUJHC:23883

also erred in directing that the sentences awarded for different offences shall run concurrently. In the facts and circumstances of the case, separate sentences ought to have been imposed for each offence in accordance with law, so as to adequately create deterrence. Ms. Bhatt, learned APP has submitted that in offences of such nature, the Court is required to deal with the accused persons with appropriate strictness so as to uphold the rule of law and to serve the ends of justice. Ms. Bhatt, learned APP has submitted that merely because the accused persons do not have any past criminal antecedents, it cannot be a valid ground for showing leniency. The circumstances of the present case disclose several aggravating factors, which required the learned Trial Court Judge to impose maximum sentence. Ms. Bhatt, learned APP has submitted that the defence has not been able to point out any mitigating circumstances, which would justify imposition of a lesser sentence upon the accused persons. Ms. Bhatt, learned APP has, therefore, submitted that the judgment and order of conviction and sentence passed by the learned Trial Court Judge is otherwise erroneous, unjust and improper

NEUTRAL CITATION
2026:GUJHC:23883

to the extent of the sentence imposed, and therefore, the same deserves to be interfered with by this Court by suitably modifying and enhancing the sentence in accordance with law. Thus, Ms. Bhatt, learned APP prayed that the appeal preferred by the accused be dismissed and further to enhance/modify the sentence suitably.

6. Heard the arguments canvassed by learned advocate Mr. Pratik Barot for the accused and Ms. Jyoti Bhatt, learned APP for the State, perused the record and proceedings and testimony of the witnesses.

7. The learned Additional Sessions Judge, Ahmedabad City, while convicting accused nos.1 to 3, after considering the rival submissions of the parties for passing the sentence, has considered the aspect of punishment in following terms:-

> "Having considered the rival submissions, it is obvious that the offence involved is serious, inasmuch as, both the accused Nos.1 and 3 were found in possession of loaded pistols. However, it appears that no previous antecedents emerge qua any of the accused herein. The accused have not shown any violent tendency and looking to the facts and circumstances herein where

NEUTRAL CITATION
2026:GUJHC:23883

no attempts have been made by the accused to use the weapons in the course of the raid, I am of the opinion that some leniency is required to be shown qua the accused and in light of such facts and circumstances, I pass the following final order:-

ORDER

The accused Nos.1 to 3 are hereby convicted and ordered to undergo rigorous imprisonment for a period of four years and are fined an amount of Rs.2,500-00 each for having committed an offence punishable under Section 399 IPC. Upon failure to pay the fine so imposed, each of the accused is ordered to undergo further rigorous imprisonment for three months. The accused Nos.1 and 3 are also hereby sentenced to undergo rigorous imprisonment for two years for having committed an offence punishable under Section 25(1B)(a) of the Arms Act. The accused Nos.1 to 3 are also sentenced to undergo rigorous imprisonment for one year for having committed an offence punishable under Section 135(1) BP Act. All the sentences are to run concurrently. The period spent by the accused in judicial custody is ordered to be treated and given set off while computing the total period of sentence. The accused No.4, on the other hand, is sentenced to undergo rigorous imprisonment for two years considering the facts and circumstances emerging herein and is also ordered to pay fine of Rs.2,500-00 for having committed an offence punishable under Section 399 IPC and on failure to pay the fine so imposed, the accused No.4 is ordered to undergo further rigorous imprisonment for three months. The period spent by the accused No.4 in judicial custody is ordered to be given set

NEUTRAL CITATION
2026:GUJHC:23883

> off while computing his sentence. The accused No.4 is currently on bail and is ordered to be taken into judicial custody. The muddamal is ordered to be appropriately disposed of."

8. In the case of **Shaikh Mohammed Naushad** (supra)**,** a judgment delivered by this Court, as has been relied upon by learned advocate Mr. Barot along with the above-referred judgments, this Court had dealt with the appeal filed by the State against sentence under Section 377 of the Cr.P.C. for enhancing the sentence. The observations citing the judgment of the case in **Shaikh Mohammed Naushad** (supra) are reproduced hereunder:-

> "9. The prayer has been made under Section 377 of Cr.P.C. by filing appeals for enhancing the sentence. Section 377 of Cr.P.C. is reproduced hereinunder for appraisal of the evidence on record vis-a-vis the defence raised by the accused during the trial in context with the facts of the case, while appreciating the law with regard to the conviction of the accused, when prayer is made simultaneously for acquittal.
>
> "377. Appeal by the State Government against sentence-
>
> (1) Save as otherwise provided in sub-

NEUTRAL CITATION
2026:GUJHC:23883

section (2), the State Government may, in any case of conviction on a trial held by any Court other than a High Court, direct the Public Prosecutor to present [an appeal against the sentence on the ground of its inadequacy-

(a) to the Court of Session, if the sentence is passed by the Magistrate; and

(b) to the High Court, if the sentence is passed by any other Court.

(2) If such conviction is in a case in which the offence has been investigated by the Delhi Special Police Establishment, constituted under the Delhi Special Police Establishment Act, 1946 (25 of 1946), or by any other agency empowered to make investigation into an offence under any Central Act other than this Code, [the Central Government may also direct] [Substituted by Act 45 of 1978, Section 29, for "the Central Government may direct", w.e.f. 18.12.1978.] the Public Prosecutor to present [an appeal against the sentence on the ground of its inadequacy-

(a) to the Court of Session, if the sentence is passed by the Magistrate; and

(b) to the High Court, if the sentence is passed by any other Court.

(3) When an appeal has been filed against the sentence on the ground of its inadequacy, the Court of Session or, as the case may be, the High Court shall not

NEUTRAL CITATION
2026:GUJHC:23883

enhance the sentence except after giving to the accused a reasonable opportunity of showing cause against such enhancement and while showing cause, the accused may plead for his acquittal or for the reduction of the sentence.

(4) When an appeal has been filed against a sentence passed under section 376, section 376A, section 376AB, section 376B, section 376C, section 376D, section 376DA, section 376DB or section 376E of the Indian Penal Code, the appeal shall be disposed of within a period of six months from the date of filing of such appeal.]"

9.1 The Hon'ble Supreme Court has referred to the case of Soman vs. State of Kerala, [(2013) 11 SCC 382] and Alister Anthony Pareira v. State of Maharashtra [(2012) 2 SCC 648] and has made observations in Paragraphs 10, 11, 12, 13 and 14 as under :-

"10. Currently, India does not have structured sentencing guidelines that have been issued either by the legislature or the judiciary. However, the Courts have framed certain guidelines in the matter of imposition of sentence. A Judge has wide discretion in awarding the sentence within the statutory limits. Since in many offences only the maximum punishment is prescribed and for some offences the minimum punishment is prescribed, each Judge exercises his discretion accordingly. There cannot, therefore, be any uniformity. However, this Court has repeatedly held that the Courts will have to take into account certain principles while exercising their discretion in sentencing, such as

NEUTRAL CITATION
2026:GUJHC:23883

proportionality, deterrence and rehabilitation. In a proportionality analysis, it is necessary to assess the seriousness of an offence in order to determine the commensurate punishment for the offender. The seriousness of an offence depends, apart from other things, also upon its harmfulness.

11. This Court in the case of Soman Vs. State of Kerala [(2013) 11 SCC 382] observed thus :

"27.1. Courts ought to base sentencing decisions on various different rationales - most prominent amongst which would be proportionality and deterrence.

27.2. The question of consequences of criminal action can be relevant from both a proportionality and deterrence standpoint

27.3. Insofar as proportionality is concerned, the sentence must be commensurate with the seriousness or gravity of the offence.

27.4. One of the factors relevant for judging seriousness of the offence is the consequences resulting from it.

27.5. Unintended consequences/harm may still be properly attributed to the offender if they were reasonably foreseeable. In case of illicit and underground manufacture of liquor, the chances of toxicity are so high that not only its manufacturer but the distributor and the retail vendor would

NEUTRAL CITATION
2026:GUJHC:23883

know its likely risks to the consumer. Hence, even though any harm to the consumer might not be directly intended, some aggravated culpability must attach if the consumer suffers some grievous hurt or dies as result of consuming the spurious liquor."

12. The same is the verdict of this Court in Alister Anthony Pareira Vs. State of Maharashtra [(2012) 2 SCC 648] wherein it is observed thus:

"84. Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime. The courts have evolved certain principles: the twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances."

13. From the aforementioned observations, it is clear that the principle governing the imposition of punishment will depend upon the facts and circumstances of each case. However, the sentence should be appropriate, adequate, just, proportionate and commensurate with the nature and gravity of the crime and the manner in which the crime is committed. The gravity

NEUTRAL CITATION
2026:GUJHC:23883

of the crime, motive for the crime, nature of the crime and all other attending circumstances have to be borne in mind while imposing the sentence. The Court cannot afford to be casual while imposing the sentence, inasmuch as both the crime and the criminal are equally important in the sentencing process. The Courts must see that the public does not lose confidence in the judicial system. Imposing inadequate sentences will do more harm to the justice system and may lead to a state where the victim loses confidence in the judicial system and resorts to private vengeance. 14. In the matter at hand, it is proved that the victim has sustained a grievous injury on a vital portion of the body, i.e. the head, which was fractured. The doctor has opined that the injury was life threatening. Hence, in our considered opinion, the High Court was too lenient in imposing the sentence of six days only which was the period already undergone by the accused in confinement."

9.2 In Bed Raj v. State of Uttar Pradesh reported in 1955 (2) SCR 583, the Hon'ble Supreme Court has concluded that the question of sentence is a matter of discretion and it is well settled that when discretion has been properly exercised along accepted judicial lines, an appellate court should not interfere to the detriment of the accused person except for very strong reasons, which must be disclosed on the face of judgment. It was further held that in a matter of enhancement, there should not be interference when the sentence passed imposes substantial punishment."

9. In the case of **Parameshwari v. The State of Tamil**

NEUTRAL CITATION
2026:GUJHC:23883

Nadu & Ors., 2026 SCC OnLine SC 209 : 2026 (1) GLR 600, it has been observed in Paragraphs 26 to 28 (GLR Paras 25 to 27) as under:-

> "**26.** The view taken by this Court in *Saleem* (supra) has been consistently reiterated by this Court in a series of judgments, including *State of Punjab* v. *Saurabh Bakshi*, (2015) 5 SCC 182, *State of Punjab* v. *Dil Bahadur*, (2023) 18 SCC 183 and several others.
>
> **27.** This Court, while again discussing the same issue in *Suresh* (supra) reiterated that the Courts must keep in mind several factors, while imposing or reducing the sentence of any accused. The Court therein also held that sentencing is awarding just and adequate punishment to the wrongdoer, and is the primary duty of the courts. The relevant portion of the said judgment is reproduced herein under:
>
> "*11. In* State of M.P. *v.* Ghanshyam Singh [State of M.P. *v.* Ghanshyam Singh, *(2003) 8 SCC 13 : 2003 SCC (Cri) 1935], relating to the offence punishable under Section 304 Part I IPC, this Court found sentencing for a period of 2 years to be too inadequate and even on a liberal approach, found the custodial sentence of 6 years serving the ends of justice. This Court underscored the principle of proportionality in prescribing liability according to the culpability; and while also indicating the societal angle of sentencing, cautioned that undue sympathy leading to inadequate sentencing would do more harm to the justice system and*

NEUTRAL CITATION
2026:GUJHC:23883

undermine public confidence in the efficacy of law. This Court observed, inter alia, as under : (SCC pp. 19-21, paras 12-15, 17 & 19)

"12. Therefore, undue sympathy to impose inadequate sentence would do more harm to the justice system to undermine the public confidence in the efficacy of law and society could not long endure under such serious threats. It is, therefore, the duty of every court to award proper sentence having regard to the nature of the offence and the manner in which it was executed or committed, etc. This position was illuminatingly stated by this Court in Sevaka Perumal *v.* State of T.N. [Sevaka Perumal *v.* State of T.N., *(1991) 3 SCC 471 : 1991 SCC (Cri) 724]*

13. Criminal law adheres in general to the principle of proportionality in prescribing liability according to the culpability of each kind of criminal conduct. It ordinarily allows some significant discretion to the Judge in arriving at a sentence in each case, presumably to permit sentences that reflect more subtle considerations of culpability that are raised by the special facts of each case. Judges, in essence, affirm that punishment ought always to fit the crime; yet in practice sentences are determined largely by other considerations. Sometimes it is the correctional needs of the perpetrator that are offered to justify a sentence, sometimes the desirability of keeping him out of circulation, and sometimes even the tragic results of his crime. Inevitably, these considerations cause a departure from just deserts as the basis of punishment and create cases of apparent injustice that are serious and

NEUTRAL CITATION
2026:GUJHC:23883

widespread.

14. Proportion between crime and punishment is a goal respected in principle, and in spite of errant notions, it remains a strong influence in the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilised societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now for a single grave infraction drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable practical consequences.

15. After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the court. Such act of balancing is indeed a difficult task. It has been very aptly indicated in McGautha *v.* California [McGautha *v.* California, *1971 SCC OnLine US SC 89 : 28 L.Ed.2d 711 : 402 US 183 (1971)] that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of*

NEUTRAL CITATION
2026:GUJHC:23883

any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of crime, the discretionary judgment in the facts of each case is the only way in which such judgment may be equitably distinguished.

***

17. Imposition of sentence without considering its effect on the social order in many cases may be in reality a futile exercise. The social impact of the crime e.g. where it relates to offences against women, dacoity, kidnapping, misappropriation of public money, treason and other offences involving moral turpitude or moral delinquency which have great impact on social order and public interest cannot be lost sight of and per se require exemplary treatment. Any liberal attitude by imposing meagre sentences or taking too sympathetic a view merely on account of lapse of time in respect of such offences will be resultwise counterproductive in the long run and against societal interest which needs to be cared for and strengthened by a string of deterrence inbuilt in the sentencing system.

***

19. Similar view has also been expressed in Ravji *v.* State of Rajasthan [Ravji *v.* State of Rajasthan, *(1996) 2 SCC 175 : 1996 SCC (Cri) 225]. It has been held in the said case that it is the nature and gravity of the crime but not the criminal, which are germane for consideration of appropriate punishment in a criminal trial. The court will be failing in its duty if appropriate punishment is not awarded for a crime which has been committed not only against the individual victim but also against the society to which the criminal and victim belong. The*

NEUTRAL CITATION
2026:GUJHC:23883

punishment to be awarded for a crime must not be irrelevant but it should conform to and be consistent with the atrocity and brutality with which the crime has been perpetrated, the enormity of the crime warranting public abhorrence and it should 'respond to the society's cry for justice against the criminal'."

(emphasis supplied)

XXXXXX

13. Therefore, awarding of just and adequate punishment to the wrongdoer in case of proven crime remains a part of duty of the court. The punishment to be awarded in a case has to be commensurate with the gravity of crime as also with the relevant facts and attending circumstances. Of course, the task is of striking a delicate balance between the mitigating and aggravating circumstances. At the same time, the avowed objects of law, of protection of society and responding to the society's call for justice, need to be kept in mind while taking up the question of sentencing in any given case. In the ultimate analysis, the proportion between the crime and punishment has to be maintained while further balancing the rights of the wrongdoer as also of the victim of the crime and the society at large. No straitjacket formula for sentencing is available but the requirement of taking a holistic view of the matter cannot be forgotten.

14. In the process of sentencing, any one factor, whether of extenuating circumstance or aggravating, cannot, by itself, be decisive of the matter. In the same sequence, we may observe that mere passage of time, by itself, cannot be a

NEUTRAL CITATION
2026:GUJHC:23883

> *clinching factor though, in an appropriate case, it may be of some bearing, along with other relevant factors. Moreover, when certain extenuating or mitigating circumstances are suggested on behalf of the convict, the other factors relating to the nature of crime and its impact on the social order and public interest cannot be lost sight of."*
>
> **28.** At this juncture, it is also imperative for us to mention that retribution is not the ultimate aim of our criminal justice system, rather it hinges on principles of reformation and restitution. The criminal justice system aims to achieve the twin objectives of creating a deterrence against crime and also providing an opportunity for reformation to the offender. Due consideration has also been provided by our legal system to the rights of the victim, who essentially are the first sufferers of the crime."

10. The learned Trial Court Judge, after considering the evidence on record, had found the charge against the accused under the Arms Act qua accused nos.1, 2 and 3 as clearly established, in light of the recovery of country-made pistol and had found that the offence under Section 135(1) of the Bombay Police Act as established against accused nos.1, 2 and 3 in light of recovery and discovery of weapons specified and established in terms of Panchnama at Exh.23.

NEUTRAL CITATION
2026:GUJHC:23883

11. Section 399 of IPC pertains to making preparation to commit dacoity, where it has been provided that whoever makes any preparation for committing dacoity, shall be punished with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.

12. Section 399 of IPC refers to “preparation” for the commission of dacoity and the section makes ‘preparation to commit dacoity’ punishable. In order to establish offence punishable under Section 399 of IPC, some act amounting to preparation must be proved and what must be proved further is that the act for which preparation was being made was for dacoity, to be committed by five or more persons. The necessary test is the intention of the accused himself.

13. Learned advocate Mr. Barot has referred to the facts of the case to submit that one person alleged to be named as ‘Munno’ is an invisible, unidentified and ambiguous accused. The prosecution, though has named him as ‘Munno’, but has failed to find out the identity of that

NEUTRAL CITATION
2026:GUJHC:23883

person. The trial was against four accused, while the law mandates under Section 399 of the IPC, five or more persons for the offence to be considered as preparation to commit dacoity.

14. To consider this relevant aspect in terms of the judgment and analysis of the evidence of the learned Trial Court Judge, it requires to be noted that Police Inspector – Shri Tarunkumar Barot attached to Crime Branch, Ahmedabad on 02.06.2003, received a secret information from his informer to the effect that five persons (i) Arvindsingh @ Rinku, (ii) Shyamvirsingh, (iii) Gitesh Pratapsinh, (iv) Dipendrasinh Tejsinh, and (v) Munno together were to come for the commission of offence between 06:00 p.m. and 08:00 p.m. at a restaurant known as Natraj Hotel located near Naroda Patiya and further the information was that the accused were armed with certain weapons and were planning to carry out dacoity on Shahid Veer Petrol Pump located on Dahegam Road.

15. The provision with regard to the secret information and protection of the source has been incorporated under

NEUTRAL CITATION
2026:GUJHC:23883

Section 125 of the Indian Evidence Act, 1872. Section 125 is reproduced hereunder for ready reference:-

> "125. Information as to commission of offences.– No Magistrate or police-officer shall be compelled to say whence he got any information as to the commission of any offence, and no revenue officer shall be compelled to say whence he got any information as to the commission of any offence against the public revenue."

16. Section 125 of the Evidence Act gives protection to the police officer, and he shall not be compelled to say his source of information as to the commission of offence. The provision is based on public policy.

17. Here, in the present case, the evidence of Police Inspector – Tarunkumar Barot as leader of the raiding team examined as PW2 refers to the information received from the informant, while the trap laid as per the testimony shows that the informant was along with the raiding party all throughout. The informant, during the time of the raid, was stated to have identified three accused alighted from the rickshaw and two accused who were coming on foot. Those who had alighted from the

NEUTRAL CITATION
2026:GUJHC:23883

rickshaw were Arvindsing @ Rinku, Shyam Prasad Virsingh and Gitesh. While the persons who were identified as had come walking, were Deepsingh and another was named as 'Munno'. The Investigating Officer has stated in his testimony that all the accused were identified by the informant, the accused were cordoned and attempt was made to apprehend them, while out of them, one person had run away. According to the Investigating Officer, the person who ran away mingled in the public and therefore, could not be found and when four of them were brought near Natraj Hotel and in the brightness of the light, when they were interrogated and personal search was made, the Investigating Officer found from the accused – Arvindsing one Tamancha (country made pistol) ducked in the belt on the left hand side of his trouser and five cartridges were recovered from his right pant pocket. On personal search of Shyamvirsinh, a knife was recovered from the belt of the pant, while from Gitesh, country-made revolver ducked on the left side of belt of his trouser was recovered along with five cartridges from the right pocket of his trouser. From accused no.4, nothing incriminating was found

NEUTRAL CITATION
2026:GUJHC:23883

during his personal search.

18. The Investigating Officer – Shri Barot as the leader of the trapping team deposed that thereafter, when he had inquired from those four persons about the person who escaped from the place, except naming him as ‘Munno’, they were not aware about his address.

19. The prosecution to be made successful under Section 399 of IPC has to prove the involvement of five or more persons. In the case of **Mahabir Singh** (supra) referred by Advocate Mr. Barot, the prosecution was under Sections 399 and 402 of IPC, where similar facts were recorded, that four persons were arrested and one person succeeded to run away under the cover of darkness. The High Court of Punjab and Haryana at Chandigarh had observed in Paragraphs 21 and 22 as under:-

> “21. During the short hearings on some previous dates of hearing, this Court gave enough opportunities to the State of Haryana to clarify the whereabouts of fifth accused, who is named as Mangal @ Manga. Despite of grant of 5/7 opportunities, no plausible explanation was put-forth, rather, one status report dated 01.03.2023 is presented in the shape of

NEUTRAL CITATION
2026:GUJHC:23883

affidavit of Ram Kumar, HPS, Assistant Commissioner of Police, Kalka, on behalf of the respondent-State. The said status report says as under:-

"1. That the above said case came up for hearing on dated 06.02.2023 before this Hon'ble Court and the Hon'ble Court was pleased to direct "To find out the status of 5th accused - Mangal @ Manga...." and adjourned the case for 01.03.2023.

2. That challan in the present case bearing FIR No.164 dated 06.09.2003 under sections 399/420 of IPC at Police Station Kala was presented against four accused persons. Since 5th 2023:PHHC:042951 CRA-S-1825-SB-2004 CRA-S-433-SB-2005-19 -

accused namely Mangal @ Manga fled away from the spot.

3. That as per police rules, the files of old cases are destroyed after a period of every four years. Subsequently, the file of the present case was destroyed. A copy of Reply from VRK branch O/O Deputy Commissioner of Police, Panchkula annexed as an Annexure - R1.

4. That regarding 5th accused namely Mangal @ Manga, as per information received from the office, neither said accused has been arrested till date nor proceedings qua proclaimed offender has ever been initiated against him. In the view of above mentioned facts the present petition filed by the petitioners may kindly be disposed in the interest of justice."

NEUTRAL CITATION
2026:GUJHC:23883

> Considering the aspect that the case was registered way back on 06.08.2003, after conducting raid, but till date prosecution is unable to explain or even failed to bring any material about the fact that any such person ever existed or if existed, what steps were taken by the prosecution to make their story more reliable i.e. gathering/assembly of five persons at the time of committing raid. Thus, in the absence of same, this Court cannot accept the version of the prosecution that name of the fifth accused is the correct one or not?"

20. Here, in this case too, it has been reported that the person named as 'Munno' was never identified and no further supplementary charge-sheet was filed or any proceeding was initiated thereafter for a separate sessions trial. The evidence of PW1 – Basruddin Jivabhai who was the Panch of the Panchnama of the incident stated that as per his information, four persons were arrested by the police from the rickshaw. PW3 - Ishvarbhai Chimanlal Kahar who was also as a Panch in the raiding Panchnama stated that apart from them, there were two accused present one was Arvindsinh and another was Jitendra and he further clarified that there were no other person present there. He stated that both the accused were in an age group of 25 to 26. The police

NEUTRAL CITATION
2026:GUJHC:23883

witnesses have contrary story to say.

21. PW4 – Mukeshkumar Natvarlal Vyas who was the member of the raiding team working in Crime Police Office, in the cross-examination, affirmed that two persons had alighted from the rickshaw who met other three persons all had gathered and has also affirmed that they had not made any attempts to catch the two of them. The evidence of PW4 suggests that apart form Police Inspector - Shri Barot and PW4, there were Police Sub-Inspector - Shri Chauhan of SK Ward, Police Sub-Inspector - Shri B.S. Goswami, ASI - Anilkumar and Head Police Constable - Niazamuddin and other staff members. Inspite of all of them, none had attempted to arrest accused named as ‘Munno’. PW4 does not even recollect as to who had gone behind accused ‘Munno’. He also does not recollect the member of raiding party going behind ‘Munno’ and does not even remember of the distance covered by any of the member of the raiding party to chase ‘Munno’. PW4 further clarifies that he does not remember the name and address of ‘Munno’, nor he remembers his age.

NEUTRAL CITATION
2026:GUJHC:23883

22. Section 125 of the Indian Evidence Act, 1872 prohibits disclosure of source of any income as to the commission of offence. The evidence of PW2 - Tarunkumar Barot suggests that the accused were identified by the informant when three of them had alighted from the rickshaw and two of them were on foot. The informant told him there that two persons who had come walking, was one Deepsingh and another was Munno. This evidence of the leader of the raiding party itself suggests that PW2 as police was not claiming for any privilege as provided under Section 125 of the Evidence Act and clarifies that the informant was with PW2. The leader of the raiding party is not disclosing the name of the informant. Section 125 of the Evidence Act gives immunity to the Police Officer from disclosing the source of information upon which he takes action. Under Section 125 of the Evidence Act, only the source of information is privileged to be kept secret, but as observed in the case of **D. Namperumal & Ors. v. State by Public Prosecutor S.P.O., 1985 SCC OnLine Mad 412**, Section 125 of the Evidence Act does not prohibit the

NEUTRAL CITATION
2026:GUJHC:23883

police officer from disclosing the source if he is so willing and the details can be elicited. In the referred case of **D. Namperumal** (supra), it has been observed as under:-

> **"**11. Considering the section and the above decisions the nature and extent of the privilege under S. 125 of the Evidence Act is the effect that no Magistrate or Police Officer can be compelled to say from whence information was got as to the commission of the offence. Now there is nothing to prohibit him from disclosing if he is so willing. So the discretion as to whether he may or not had been left with the Magistrate or the Police Officer. Under the English Law, protection does not depend upon a claim being made, and the duty is cast upon Judges apart from objections being taken to exclude such evidence if it is detrimental to public interest as held in *Honssay* v. *Bright* ([L.R.] 29 Q.B.D. 494) But so far as we are concerned under S. 125 of the Indian Evidence Act a police officer cannot be compelled to say from where he got information in relation to the commission of any offence whether it is an offence in respect of which the prosecution is instituted or with reference to the commission of the offence in any other case. Hence the conclusion arrived at by the learned Sessions Judge is correct and the same will have to be confirmed.
>
> 12. But at the same time only the source of information is privileged and the detail can be elicited. In this case nobody know whether the source report in respect of which the question is asked contains any information which cannot be divulged under

NEUTRAL CITATION
2026:GUJHC:23883

> S. 125 of the Evidence Act. Under the circumstances the prosecution will have to produce the source report in a sealed cover and the Sessions Judge can peruse the same to find out whether that report contains any information which cannot be divulged under S. 125 of the Evidence Act, and with reference to information not hit by S. 125 the Sessions Judge may permit the counsel for the petitioner to put question to D.W. 2 regarding the details of criminal cases against UP.W. 7. With these observation this criminal miscellaneous Petition is dismissed."

23. Here in the present case, PW2 – Tarunkumar Barot stated that he had received the information on 02.06.2003 from his informant describing that on that day in the evening, between 06:00 to 08:00, five persons (i) Arvindsingh @ Rinku, (ii) Shyamvirsingh, (iii) Gitesh Pratapsinh, (iv) Dipendrasinh Tejsinh, and (v) Munno, in total five were to assemble near Naroda Patia and were coming to Natraj Hotel, they were having arms with them and were planning to commit dacoity at some petrol pump. PW2 stated that as per the information, he informed Police Sub-Inspector – Goswami and Chauhan, Head Police Constable – Nizammuddin, Head Police Constable – Mukesh Natvarlal Vyas, Mahendrasinh, Vihabhai and Mansukhlal, PRO and they all went in the Government

NEUTRAL CITATION
2026:GUJHC:23883

vehicle at 16:45 hrs. from Naroda through Kalupur, and all the staff members at a distance stood at Natraj Hotel in watch, and they had kept their vehicles at a distance and thereafter, two pedestrians were stopped and were informed about the information, for them to remain as a Panch. According to him, one was Faruk Abdulraheman Pathan and the second was Basruddin Jivabhai Sandhi and then started to draw Panchnama at 17:30 hrs. PW2 further stated that thereafter, all the staff members as well as the informant and others scattered around Natraj Hotel and took their position.

24. The admitted position which becomes clear is that the informant was also a member of the raiding party. The leader of the raid – PW2, thus, was making it clear from his own action that he was not preferring to conceal the source of his information. The Investigating Officer appears to be not claiming any privilege under Section 125 of the Evidence Act since he had kept the informant along with him all throughout the raid. The evidence further records that through the informant present, he had got the identification of all the five accused at the

NEUTRAL CITATION
2026:GUJHC:23883

spot. The deposition of PW2 – Shri Barot does not disclose that the information so received by him was reduced in writing as a 'Janvajog Entry' at the Police Station while the Panchas do not affirm that the informant had identified the accused there.

25. The police officer – PW2, as leader of raiding team, was required to produce on record a General Diary as an officer in-charge of the Police Station to prove the record of the information, which he received from the informant. Section 44 of the Police Act, 1861 provides for "such General Diary" to be maintained by the officer in-charge of the police station. In the case of **Directorate of Enforcement v. Dipak Mahajan, (1994) 3 SCC 440,** it has been observed as under:-

> "112. The expression 'diary' referred to in Section 167(1) of the Code is the special diary mentioned in Section 167(2) which should contain full and unabridged statements of persons examined by the police so as to give the Magistrates on a perusal of the said diary, a satisfactory and complete source of information which would enable him to decide whether or not the accused person should be detained in custody but it is different from the general diary maintained under Section 44 of the

NEUTRAL CITATION
2026:GUJHC:23883

Police Act."

26. Section 44 of the Police Act, 1861 is reproduced hereinunder for ready reference:-

> "44. Police-officers to keep diary.—It shall be the duty of every officer in charge of a police- station to keep a general diary in such form shall, from time to time, be prescribed by the State Government and to record therein all complaints and charges preferred, the names of all persons arrested, the names of the complainants, the offences charged against them, the weapons or property that shall have been taken from their possession or otherwise, and the names of the witnesses who shall have been examined.
>
> The Magistrate of the district shall be at liberty to call for and inspect such diary."

27. In the case of **Sukhlal Banshi Lodhi & Anr. v. State of M.P., 1998 (1) MPLJ 288,** the Madhya Pradesh High Court was dealing with the issue with regard to copy of the General Diary, which was the best evidence available not produced during the trial. It had been noted that the copy of the General Diary relating to the fact that the police had started from the police station in pursuance of the information received ought to have been produced to show that the police party started, as claimed. It was

NEUTRAL CITATION
2026:GUJHC:23883

further noted that it was the duty of the prosecution to have filed these documents to show that there was substance in the prosecution case that the information as claimed and the party had gone to the place of occurrence. The observation was also with regard to taking independent witnesses from the village. The Court observed that there is nothing in the statement of any witness that any attempt whatsoever was made to take any independent witness from the village. The Court also has made reference to the provision of compliance of Section 50 of the Cr.P.C., whereupon it is the duty cast on every police officer or the other persons arresting any person without warrant to communicate to the person arrested full particulars of the offence alleged for which he was arrested or other grounds to such arrest.

28. Here too, in the present matter, it was claimed that the accused persons were arrested on the spot and weapons were recovered from them. It would be the burden of the prosecution to dispel the doubt, to prove the case beyond all reasonable doubt.

NEUTRAL CITATION
2026:GUJHC:23883

29. In the present case, it does not appear that the leader of the raiding party and his team member or the informant had given their search to the person arrested before the search of those person in presence of Panchas. Section 51 of the Cr.P.C. provides about the search to be made of the arrested person. Further, it is not the case of the leader of the raiding party – PW2 – Shri Barot that on seizure of the Tamancha and a knife from the accused, any seizure receipt was issued showing the articles taken in possession by the police. Section 51 of the Cr.P.C. provides that where any articles is seized from the arrested person, receipt showing the articles taken in possession by the police officer shall be given to such person. PW2 – Shri Barot does not refer in his evidence of the compliance of Section 52 of the Cr.P.C., which gives the officer power to seize offensive weapons, where after the seizure, the officer has to deliver all the weapons so taken to the Court or officer before which or whom the officer or person making arrest is required by Cr.P.C. to produce the person arrested. The Tamancha, which he found from accused Arvindsing, was loaded and on unloading the weapon, he found one cartridge. The

NEUTRAL CITATION
2026:GUJHC:23883

Tamancha with accused Jitesh similarly unloading, found one cartridge. PW2 stated that on inquiring from Arvindsingh and Gitesh about the pass permit, they denied of any pass permit and therefore, the Muddamal was seized at the place. This very act of recovering and seizing the Muddamal could have been proved by the production of the office copy of the seizure receipt as contemplated under Section 51 of the Cr.P.C.

30. PW2 stated that the Tamancha and the cartridges were put under the seal of Inspector of DCB Crime. PW2 further stated that there was inscription in English of the letter 'M.M. Cash'. The knife was noted of 21 centimeters. The value of one Tamancha was calculated as Rs.15,000/- and in total noted as Rs.30,000/-, while the value of one cartridge was recorded as Rs.100/- and the total value for the cartridges was noted as Rs.10,000/- and knife was valued at Rs.20/-. PW2 inquired from the accused, who informed that all the four along with 'Munno' had made a plan to commit dacoity at the petrol pump, which was near Bhugamali Dahegam and they had made preparation for that. It appears that the accused had not

NEUTRAL CITATION
2026:GUJHC:23883

informed the police the name of the petrol pump. So as per the information from the accused to the police, which is not admissible in evidence as statement before police, the plan and preparation was already made, so they had not gathered there for making any preparation for dacoity at that place.

31. In the cross-examination from the side of accused nos.1, 2 and 3, PW2 affirmed that the members of the raiding party all had weapons with them. In such circumstances, not giving their own search before the arrested person would make the process of seizure and arrest suspicious. There is no evidence of record of issuing any seizure receipt, nor the officer states that he had forwarded the weapons seized from the accused to the Court or had handed over to the officer, before whom, he was required to produce the person arrested. There is no evidence of leader of this raiding party of producing the accused along with the weapons before the nearest Judicial Magistrate, immediately on apprehending them.

32. It is the case of the prosecution that the detailed

NEUTRAL CITATION
2026:GUJHC:23883

Panchnama was drawn with regard to the incident in presence of two independent Panchas and thereafter, Police Inspector – Shri Barot lodged a complaint against the accused. A report as also the complaint were forwarded to the PSO, Crime Branch who acting thereon registered an offence at DCB CR no. I-7/2003 and after taking custody of the Muddamal seized, the PSO of the DCB handed over the further investigation to Police Sub-Inspector - Ibrahim Chauhan (PW8) who was also the member of raiding party, an officer who was following the instruction of PW2, during the trap.

33. PSO – Madhusingh Bharatsingh Charan was examined as PW9 who stated that the incident had occurred on 02.06.2003 and on that day, Police Inspector – Tarun Barot had given a complaint against Arvindsingh @ Rinku and four others regarding dacoity. As per the rules, he registered the offence and handed over investigation to Police Sub-Inspector - I.K. Chauhan (PW8) and stated that in connection with the offence, he had to maintain the Muddamal receipt and also a register with regard to arrest and other process. In connection with this offence,

NEUTRAL CITATION
2026:GUJHC:23883

he registered an FIR and had recorded the entry in the Station Diary. The entry was also made with regard to the arrest. The Muddamal receipt was issued for two Tamanchas, one knife and 15 live cartridges, which he received in a sealed condition. This witness has not produced a copy of the Muddamal receipt in the evidence.

34. The PSO in the cross-examination was confronted with his report under Section 157 Cr.P.C. with the suggestion that the time was belatedly recorded in the report after the raid. He denied the suggestion that he had not drawn any Muddamal receipt and also denied that he had not made any entry regarding the arrest of the accused in the register. The witness has not produced any of such document in his evidence. In the cross-examination from the side of the accused no.4, PW9 PSO stated that he had not handed over the Muddamal to Shri Chauhan, while handing over the investigation. He also affirmed that when the Muddamal had been sent to him, he had not verified whether it was in a sealed condition and had also not verified by opening the seal. The witness voluntarily

NEUTRAL CITATION
2026:GUJHC:23883

stated that the Muddamal was in a plastic box and that it was easily visible, which fact is not corroborated by the other police witness.

35. In the cross-examination from the side of accused nos.1 to 3, PW2 as leader of raiding team, has stated that he had not sent his superior officer the information received, nor had he noted the details of the information in any of the record.

36. PW2 also stated that he had not made any arrangement for procuring Panchas after moving out of Police Station till the time had arranged themselves for the watch.

37. The leader of the raiding team had the duty to have recorded the information received, the details of the information in the record, sent to his superior officer was necessary to prove the authenticity of having received the information. The police had the immunity under Section 125 of the Indian Evidence Act, 1872 to not disclose the source of information, but cannot take the plea of immunity of not informing the superior office of

NEUTRAL CITATION
2026:GUJHC:23883

the details of information received. To prove the fairness, the leader of raiding team was required to even record the information received in Police Station diary as 'Janva Jog' the Gujarati phrase translates as 'worth knowing', 'for information'. The information is not recorded anywhere, inspite the fact that the informant is traveling along with this officer throughout. The informant had been in the raid. He accompanied PW2. As per the PW2, the informant had identified the accused.

38. The very crucial aspect, which becomes vital in background of the fact that informant was accompanying the leader of the raiding team, PW2 as the leader has not verified the information. PW2 had not made any endeavour for verification of the information. PW2 had not tried to find out whether the informant had any enmity with the accused, and whether he was deliberately trying to falsely implicate the accused.

39. The Investigating Officer – PW8 testimony proves that apart from the Investigating Officer and PW2 the leader of raiding party, there were further ten members in the

NEUTRAL CITATION
2026:GUJHC:23883

team. The Investigating Officer had named them in his deposition. The investigation also becomes questionable since the Investigating Officer (PW8) was also the member of the raiding party with PW2 – Shri Barot as leader of the team. Since Investigating Officer was the member of the raiding party, he was the eye witness to the trap. Thus, in all due fairness and to prove the independency of the investigation, the PW8 ought not to have investigated the case.

40. The Investigating Officer as PW8 deposed that on 02.06.2003, when he was at his Crime Branch, Ahmedabad City Office on his duty, at about 16.15 Tarunkumar K. Barot, Police Inspector, Crime Branch, Ahmedabad City had informed him about the information received from his personal trustworthy informant and had also informed PW8 that the information is definite and essential, that on that day between six thirty and eight in the evening, five persons within the age group of 20 to 30 years with weapons were going at a petrol pump near Hotel Natraj, Naroda Patiya to commit dacoity.

NEUTRAL CITATION
2026:GUJHC:23883

41. The information transmitted to PW8 was not of accused to assemble to make preparation for dacoity, the information was they were actually to go at a petrol pump to commit dacoity. There was no information of the name of the petrol pump, nor the place where the petrol pump was situated.

42. Then in view of this information received, the raiding team was required to arrange themselves at the petrol pump. It is not the information that five or more persons were preparing for dacoity at a particular place and they were to raid that place. The definite information conveyed to the PW8 was that the dacoits were going for dacoity at a petrol pump between 6 to 8 p.m. in the evening. The Investigating Officer, though had received the information, had failed to transcribe the same in the station diary as 'Janva Jog'.

43. There is variance in the information to PW2 and PW8. PW2 had not informed PW8 that the alleged persons were going to come to Natraj Hotel. Investigating Officer (PW8) had stated in his cross-examination that at that time,

NEUTRAL CITATION
2026:GUJHC:23883

there were about six Police Inspectors serving and one officer in the level of Deputy Superintendent of Police. PW8 also affirmed that prior to taking up the investigation, he had not requested in writing or orally to his superior officer that since he was member of the raiding party, he could not take up the investigation nor had he talked about it to Shri Barot. In the background, inference could be drawn that to support the other officer of his level, the investigation was handed over to him. It appears that the Deputy Superintendent of Police was not informed about the raid.

44. The time of receiving such information is also not proved. PW8 has admitted in the cross-examination that he was continuously with Shri Barot from the time Shri Barot conveyed the information and till they started for raid between 16.15 to 16.45 at the Police Station. At that time, the information was not recorded in station diary, nor he had recorded the details of information on some paper, and had also confirmed that none of the members of the raiding party had recorded the information in his presence. So the fact becomes clear that the information

NEUTRAL CITATION
2026:GUJHC:23883

received was never recorded by any of the police persons. Another glaring thing is that inspite of there being 12 members in the raiding team, none of them had noted or recorded or memorized the registration number of autorickshaw in which three of the accused had come at Natraj Hotel, inspite of all of them standing near Natraj Hotel on watch, when all the members saw the three accused alighting down from the autorickshaw.

45. As per the testimony of PW2, Shri Barot as leader of raiding team he had inquired at Natraj Hotel from the accused, who all stated that along with the escaped person ‘Munno’, they had made plans and made preparation to commit dacoity at the petrol pump near Bhagamali Dehgam, so it was not the case that the accused had come to Hotel Natraj for discussing their plans or making preparation for dacoity at Natraj Hotel.

46. The information received as recorded in the Panchnama Exh.23 reflects that five persons aged about 20 to 30 years, i.e. accused nos.1 to 4 and one ‘Munno’ with the illegal weapons in their hands, for making preparation for

NEUTRAL CITATION
2026:GUJHC:23883

the commission of dacoity at petrol pump were about to assemble at Natraj Hotel near Naroda Patiya three cross road between 6 to 8 in the evening. So the information recorded in Panchnama was that they were to assemble at Natraj Hotel to make preparation for dacoity.

47. Three disembark from a autorickshaw at Natraj Hotel, none of the members of raid nor the team leader had seen the accused paying fare to the auto driver. Police had not inquired whether auto driver was involved. None of the team members had checked any other rickshaws. After the three alighted from rickshaw, within two to three minutes, the remaining two came there walking. PW2 – Shri Barot denied of any office of travel Company located in the line of Natraj Hotel, while Investigating Officer PW8 affirmed that there were many offices of travels surrounding Natraj Hotel. PW2 did not deem fit to call any person from travel offices to witness the incident. PW8 affirmed that Natraj Hotel was very famous and there would be lot of customers.

48. The Investigating Officer affirmed that the accused by

NEUTRAL CITATION
2026:GUJHC:23883

profession were diamond cutters which he came to know during the inquiry from the accused. PW8 denied to say that the labourer of diamond cutting factory at Krishnanagar, and Bapunagar would come in the evening to drink tea at Natraj Hotel.

49. PW6 – Nizamuddin Gulammiya Saiyed testified to state that he and Mansukhbhai had run after ‘Munno’ to catch him and that they had ran for above 100 to 150 meter, while the Investigating Officer (PW8) affirmed that Nizamuddin (PW6) in his statement had not got it recorded that Nizammuddin or Mansukhbhai had ran behind accused. Thus, the fact of police following the escaped accused named ‘Munno’ also get falsified by the testimony of Investigating Officer (PW8). The Investigating Officer further stated that both the Panchas were taxi drivers. As per Shri Barot, Panchas were called from the road, who were pedestrians.

50. The Investigating Officer (PW8) evidence recorded that he had asked for the remand of accused from the Court which was granted till 07.06.2003. He inquried from the

NEUTRAL CITATION
2026:GUJHC:23883

accused about their name, weapon, catridges and knife. Inspite of the remand, the Investigating Officer could not find out the details of 'Munno', is a fact impossible to believe. The whereabouts and the origin of 'Munno' could have been ivestigated, but appears that no efforts had been made. Law requires for the commission of offence for preparation to commit dacoity, five or more persons. In order to establish offence under Section 399 IPC, some act amounting to preparation must be proved, and what must be proved further is that the act for which preparation was being made was for dacoity that is to say to be committed by five or more persons.

51. In Ghotlu Modi and Etc. v. State of Bihar, 1986 Cri.L.J. 1031, Mohd. Hussein v. State of Bihar, 1987 Cr.L.J. 1391, it was observed that the mere fact that the accused persons were in a lonely place at night in a house under construction and incriminating articles like firearms, bombs and a Bhujali were recovered from their possession, is not sufficient to prove the charge that they assembled for making preparation for commission of dacoity.

NEUTRAL CITATION
2026:GUJHC:23883

52. In **Mohan Singh & Ors. v. State of Punjab** in CRA 790 SB 2009, decided on 30.11.2022 by Punjab and Haryana High Court at Chandigarh, it was observed as under:-

> "First of all, this Court has to examine as to whether the accused were allegedly making preparations to commit dacoity and had assembled for the purpose of committing dacoity, while they were sitting at a place duly armed with firearms and various other weapons. Sections 399 and 402 of the Indian Penal Code clearly provides that making preparations for the commission of dacoity and assembling for the purpose of dacoity are punishable offences. Consequently, the prosecution is bound to prove, from some evidence directly or indirectly or from the attending circumstances that the accused persons had assembled for no other purpose but to make preparations and assembling for the commission of dacoity. If the evidence led by the prosecution falls short of it, the case is bound to fail. Though word "preparation" has not been defined in the Indian Penal Code, the prosecution is obligated to lead some evidence to show such a conduct which is sufficient to prove the factum of "preparation" by the assembly and that the accused persons had conceived any such designs for committing dacoity and in fact, intended to achieve some object, for which they had assembled. Therefore, mere fact that some were found sitting at a lonely place at mid night and certain firearms and weapons were recovered from their possession would not be sufficient to prove the charge that they had assembled for

NEUTRAL CITATION
2026:GUJHC:23883

> making preparation for commission of dacoity. The evidence must be such, which may plainly manifest the main charge to satisfy the conscience of the Court that the members of the assembly did such act, or acts, which may lead to irresistible presumption, that they had assembled for the purpose of committing dacoity and were making preparation for the same, but in absence of any such evidence, mere assemblage and recovery of firearms do not prove the charge."

53. Here in the present matter, the information to the Investigating Officer was of five accused about to go to petrol pump to commit dacoity armed with weapons. The information given to the Investigating Officer as member of raiding time was not of five accused assembling at Natraj Hotel for making preparation to commit dacoity, who had assembled for that purpose.

54. From the evidence of PW2, Shri Barot when he inquired from three-four accused, they told him that they planned and made preparation for dacoity at petrol pump, near Bhugamali – Dehgam. The statement of accused before the police is inadmissible in evidence. However, from this statement before the leader of raiding team, it becomes clear that five had assembled there not for making any

NEUTRAL CITATION
2026:GUJHC:23883

preparation for dacoity. Natraj Hotel is a busy place, near the three cross lane. It is unfathomable that the accused would come for preparation to commit dacoity at the place having high frequency of people visiting there. Natraj hotel is not a secluded place, it was surrounded by many offices of travel Company.

55. PW2 – Shri Barot stated that he along with the informant were standing at the corner of Natraj Hotel when three accused alighted from the rickshaw after the informant identifying them, PW2 had not signalled to the rest of the member of the team. PW2 has no knowledge from which direction the other two were coming walking. According to PW2, when both the persons met the other three and started their talks, they immediately cordened, to apprehend them, what was the conversation between five of them was not overheard by PW2. PW2 does not even know which of his team member had run after alleged 'Munno'. He himself had made no efforts to catch the escaped person. So here when the talks of the accused was not overheard, there is no material on record to suggest that at that time, accused were making

NEUTRAL CITATION
2026:GUJHC:23883

any plans for dacoity.

56. PW2 stated that on the personal search of the accused, he found no currency notes, or other papers or discovery from their person. This fact becomes improbable to believe since they had come in a rickshaw and when rickshaw driver was not involved, then certainly, they would have paid rickshaw fare. They would have further plans to go to their alleged destiny which was at about 28 kms. distance, and from there further would have made plans to escape by some vehicles or other means.

57. To the question to PW2 whether he had made any efforts to verify the authenticity of the information, PW2 replied that informant was along with him. In the circumstances of the matter, when the leader of the raiding party had not made any efforts to shield the source of information, then the Investigating Officer was required to record the statement of informant who probably could have given the statement of the earlier plans and preparation made by the accused for which he had secret information. Unfortunately, in view of Section 125 of the Evidence Act,

NEUTRAL CITATION
2026:GUJHC:23883

statement of the informant could not be recorded. So the case of preparation for the commission of dacoity could not be proved.

58. PW4 – Mukesh Kumar Vyas was also the member of raiding team. PW4, in the cross-examination, affirmed that they used to consider the cases of weapons and Narcotics as quality cases and in such cases, the Government would give encouragement prices. Such details are sent to the Government in 'price form'. They would keep details of their work in personal diary. PW8 – Shri Chauhan had not asked for his personal diary during his statement. According to PW4, they would get those diary deposited before the Crime Writer Head. No diary of any of the member has been produced to corroborate their own version. So no diary is coming forth on record to corroborate the fact of that day incident.

59. PW4 also stated that he had not recorded the registration number of the rickshaw in his personal diary, nor had made any efforts to catch the rickshaw. PW4 also stated that there were not checking the vehicles on the road,

NEUTRAL CITATION
2026:GUJHC:23883

clarifying that no occasion arose to do such checking. After the two persons came there and five had gathered, they had not made any efforts to approach the two. He does not remember who had gone after Munno to catch him.

60. PW4 also affirmed that at that time, the lights were on in the travel office and the hotels. According to PW4, Shri Barot was with the informant and two Panchas.

61. PW4 said that ‘Munno’ rushed away towards Dehgam. According to the memory of PW4, both the persons were standing near Natraj Hotel.

62. So in context of evidence of PW4, the unknown person ‘Munno’ was already present at the place, even before the rickshaw with accused nos.1 to 3 could come at the Natraj Hotel. The evidence of PW4 further clarifies that at the time when the rickshaw had come, the lights of the offices of the travel and the hotels were on.

63. No person from the travel office or from the hotels were

NEUTRAL CITATION
2026:GUJHC:23883

called as Panchas. PW4 testified that it was a place of high frequency of people, and at the time of incident, about 100 persons from the public had gathered there. The informant who was with Shri Barot, PW2 had not identified the accused Dipendrasing and 'Munno' earlier as according to PW4, they were present there even before the arrival of rickshaw.

64. The case was of 'preparation' for the dacoity. Police witnesses could not testify as to what preparation and plan were made by the accused at Natraj Hotel. They have not overheard the talks between the accused. Before anything could happen, the police cordoned them and held them as apprehended.

65. The Investigating Officer – PW8 was confronted with the charge-sheet filed. Four persons were shown as accused in column no.1 and four others were shown in column no.2 of the charge-sheet. The Investigating Officer was posed with a question that four persons were apprehended at the spot and four had ran away from the place, to which, the Investigating Officer denied. The

NEUTRAL CITATION
2026:GUJHC:23883

Investigating Officer, while giving clarification said that only one person out of five had run away, while the rest of the persons are those whose names got disclosed during investigation. The charge-sheet in column no.2 records only first name of the four persons, which includes at Sr. no.1 ‘Munno’, and the three others have been referred, but with only first name and not other detail of their father’s name, surname and their residence.

66. The Investigating Officer stated that names of others were disclosed during the time of the search of ‘Munno’ from the co-accused, and he had not recorded the statements of any independent person. The Investigating Officer also stated that he had made attempt to arrest the other three accused referred in column no.2 of the charge-sheet. The Investigating Officer does not recollect the time of arrest of the present accused. According to his evidence, Shri Barot had arrested them at 21.30 hours, till the time, investigation was handed over to him, he was continuously with Shri Barot.

NEUTRAL CITATION
2026:GUJHC:23883

67. The police who had ran after ‘Munno’ was PW6 – Nizammudin Gulammiya Saiyed. In his examination-in-chief, PW6 stated that he and Police Constable– Mansukhbhai had ran after the accused who fled from the place, but according to the witness, he escaped within the crowd. So they come back near Barot Saheb, while the Investigating Officer has denied of any statement given by PW6 – Nizammudin of PW6 and Mansukhbhai running after the accused.

68. The existence of fifth person as ‘Munno’ becomes doubtful and the evidence on record and the investigation followed after the raid makes fifth accused more inconspicuous. The police, as interested party to the raid, who all them would be interested to get their raid declared as legal and valid, and prove successful at the most was required to prove the fifth person as one of the accused.

69. Section 391 of the IPC defines ‘dacoity’, which punishes the act of dacoity committed by five or more persons conjointly.

NEUTRAL CITATION
2026:GUJHC:23883

70. Section 391 of IPC would be relevant to understand the provision of Section 399 IPC, wherein in the present matter, four accused came to be convicted. Section 391 IPC reads thus:-

> "391. Dacoity.—When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity".

71. Section 399 of IPC, thus, would be invoked only when it is proved that five or more persons conjointly were making preparation for committing dacoity. The prosecution has no escape, but to prove the active involvement of five or more persons in the preparation for committing dacoity.

72. Generally, in trap cases in the form of raid, the Panchas are supposed to depose all the things they saw and observed and recorded in the Panchnama. They are selected to be an independent person to the proceeding.

NEUTRAL CITATION
2026:GUJHC:23883

The raiding party leader is the person directing the raid. It was his duty to find independent and reliable person to be made Panch. Shri Barot callously without any verification of background randomly called two persons from the road, while as per the Investigating Officer, PW8 Panchas were taxi drivers.

73. The Investigating Officer – PW8 was the member of the raiding party. The Investigating Officer is also an interested party as he would also want to prove the success of their attempt, then the prosecution was required to prove that five or more persons assembled for the preparation of commission of dacoity. Section 402 IPC provides for assembling for the purpose of committing dacoity. Assembly of five or more persons is a must, to be established, then the another stage is that of preparation by five or more to commit dacoity, which is punishable under Section 399 of IPC. The word ‘conjointly’ employed in the definition of dacoity as provided under Section 391 of IPC bears importance on the liability of persons accused of an offence of dacoity.

NEUTRAL CITATION
2026:GUJHC:23883

74. Panch PW1 stated that the police has caught four persons from a rickshaw. Panch PW3 stated that only two accused were present one was Arvindsing and another was Jitendra, when Panchnama was drawn and the police had taken them to 'Vir Sahid Petroleum' 'Dinesh Petroleum'. Surrounding the petroleum were open fields. Panch deposed that he had not dictated the Panchnama. PW3 as Panch was not declared hostile. Why panch was taken to 'Vir Sahid Petroleum' 'Dinesh Petroleum' does not become clear.

75. The prosecution has examined PW7 – Rajeshkumar Manilal as one employee of 'Kargil Sahid Petroleum', situated on Dehgam road. Panch witness no.3 was asked by the defence lawyer whether the accused had shown any thing at that place, which Panch does not recollect, and stated that the place where they had gone was a huge petrol pump. PW7 – Rajesh Manilal is not the owner of the petrol pump, his deposition shows that he was unemployed at the time of his testimony during the trial. PW7 said that on 03.06.2003, Gayekwad Haveli police had come along with the person. The police told him that

NEUTRAL CITATION
2026:GUJHC:23883

these four persons were going to commit dacoity at that petrol pump, which was 'Kargil Sahid Petroleum', and had brought the four for identification. The witness had identified one out of the four at that time and had also identified one during trial. The Court verified the name as Arvindsing (accused no.1).

76. The witness – PW7 could state that he could identify the one, as he (accused no.1) had come on 02.06.2003 at the petrol pump and had asked for drinking water from another of their employee, and then he was shown the place to fetch water, the accused then drank water and left the place. The witness PW7 stated that there was one more person along with him, but he could not identify.

77. There is nothing on record to prove that PW7 was serving on petrol pump on that day. Further, the evidence of PW7 only proves one person. In the cross-examination, PW7 gives evidence that he had not got it recorded in his statement that police had brought four persons at the petrol pump.

NEUTRAL CITATION
2026:GUJHC:23883

78. PW5 – Narendra Bechardas Kahar is the Panch who had been called by the Gayakwad Haveli Police Station, who was informed at the police station that four accused were to show the petrol pump place and they were to go to see it, so from the Police Station they came on Naroda-Dehgam road. As per the panch evidence, two accused showed the petrol pump place. The witness affirms that PW3 – Ishvarbhai was the another panch. PW5 as panch has named the petrol pump as "Sahid Vir Petroleum'. PW3 addressed the petrol pump as 'Vir Sahid Petroleum', which PW7 referred it as 'Kargil Sahid Petroleum'. The evidence of PW3 shows that it was accused nos.1 and 3, Arvindsing and Jitendar @ Jitu, while PW5 could only identify accused no.1 – Arvindsing. PW7 had named the petrol pump, where accused no.1 allegedly visited for drinking water, as 'Kargil Sahid Petroleum'. What connection the prosecution wanted to bring, whether accused planned to commit dacoity at 'Kargil Sahid Petroleum' does not get proved, nor anything had come on record by way of the evidence of PW3 and PW5 that 'Vir Sahid Petroleum' and 'Kargil Sahid Petroleum' are one and the same. Even if it would be considered as one

NEUTRAL CITATION
2026:GUJHC:23883

and the same place, merely seeing the petrol pump place or accused showing the petrol pump after the raid at Natraj Hotel will bear no relevance to create value.

79. The informant had not given any physical description of the accused, the information received, as was not recorded prior to starting for the raid, only on the oral testimony of the police without corroboration with any legal document to be maintained by law cannot be believed. The leader of the raiding team Shri Barot PW2 was mandatorily required to note the information as the 'Janva Jog entry' in the station diary and after sending the information to the superior officer should have proceeded for raid.

80. Strangely, what was the trap for, what was the Investigating Officer heading for, whether to see the actual dacoity on the petrol pump, or to see the preparation for dacoity at Natraj Hotel does not get clear from the testimony of police witnesses, more specifically from the leader of the raiding team.

NEUTRAL CITATION
2026:GUJHC:23883

81. The informant was along with the leader of the raiding team, and Shri Barot deposed that the informant had identified them at Natraj Hotel. It is not the case of any Test Identification Parade held in presence of Executive Magistrate. The informant, being the member of the raiding team and stated to be the eye-witness to the incident identifying the accused was required to be examined as prosecution witness. The defence could have brought on record any ulterior motive of the informant or other consideration to support the officer to earn the name for prize money.

82. All the examined witnesses are almost interested and the witness from the petrol pump could not give any specific evidence, he was also not trustworthy witness as he could depose only about his other employee from whom accused no.1 had asked for drinking water. That witness could only refer to accused no.1. Panchas have not deposed of what they actually saw, during the raid and the panchas for the petrol pump are the one taken at the petrol pump, the day after the raid.

NEUTRAL CITATION
2026:GUJHC:23883

83. When FIR could not be registered prior to the raid, the least the leader of the trapping could have done was to write the information in the Police Station diary or the diary maintained under Section 44 of the police, no details were maintained of the constitution of the team and the names of the members of the team in the Police Station record. The superior officer was not informed about the information, nor was informed of the formation of team to lay the trap. Worst part of the present matter was that the investigation was conducted by the officer who was subordinate to the leader of raiding team. The Investigating Officer was following the instruction of the raiding team head. It becomes questionable, about the control, the head of the raiding team hold, to even not inform his superior officer about his action. No standard procedure had been proved to be followed by the police in cases of such raid. Law does not give unlimited power to the police to apprehend any person without following the process of law. The police is required to prove that his action was fair, independent and without bias, and was in accordance with law.

NEUTRAL CITATION
2026:GUJHC:23883

84. In **Kailash Dheemar** (supra), the case was of, in-charge of Police Station who along with police forces had reached the spot and heard the conversation of the accused persons who were making a plan to commit a dacoity. After hearing the conversation, police personnel surrounded and apprehended six of the accused and from them three of the accused succeeded in running away from the spot. In that regard, ingredients of Sections 399 and 402 of IPC were considered placing reliance on the judgment of **Annu @ Ansingh v. State of M.P., 1996 Cr.L.J. (MP) 110,** wherein it has been held as under:-

> "For offence u/s.402 of IPC the conditions required to be proved by the prosecution are:-
>
> (i) Assembly of 5 or more persons.
>
> (ii) It should be for the purpose of dacoity.
>
> In this case, there was an assembly of more than 5 persons. Further circumstances that they were armed with such implements, which could be used for house breaking or causing obstruction or climbing over the house as the rope was there, were also

NEUTRAL CITATION
2026:GUJHC:23883

> present. At least there was one fire-arm i.e. country made pistol. So by these circumstances, it can be suspected that these appellants had gathered with some nefarious object, as to why such a large number of persons should gather with such deadly weapons. But then the question is whether they were assembled for the purpose of committing dacoity, such an inference may be taken, if there is any background to show that they were confirmed dacoity. There is no evidence on record that they were either convicted for dacoity. So the circumstances are insufficient to infer that the assembly was for the purpose of dacoity."

85. In **Santosh Kumar and Etc.** (supra), the case which was on record before the Trial Court was about the conversation between the accused persons regarding preparation to commit dacoity and grant for sanction for prosecuting the appellants under the Arms Act. Having considered the rival contentions, it had been observed in Paragraph 5 as under:-

> "5. Having considered the rival contentions, I have also gone through the record of Sessions Case no.231/2004. Naither Inspector Ramesh Pandey P.W.7 nor Constable Dhanush Kumar Pandey P.W.4 who had apprehended the appellants near the canal have deposed that they heard any such conversation of the appellants which was indicative of their preparation for committing any dacoity. It is undisputed

NEUTRAL CITATION
2026:GUJHC:23883

> that though the appellants were alleged to be armed with deadly weapons, yet neither any weapon was used nor any resistance offered by them. Independent public witnesses i.e. Pramod Kumar Patel P.W.1 and Bijuram Yadav P.W.2 did not support the prosecution story and stated that the police did not effect any seizure in their presence near the canal and they knew nothing about the incident. Constable Dhanush Kumar Pandey P.W.4 has in Paragraph 8 stated that he could not tell as to what weapons were seized from the appellants. His statement in Paragraph 8 completely contradicts his statement in Paragraph 2 that the appellants were making preparations for committing dacoity and country made pistol, Gandasa like knife and sword were seized. It is also pertinent to note that this witness did not state that any jute bomb was seized from any of the appellants. Coming to the testimony of Inspector Ramesh Pandey PW7 he also did not state that he heard the appellants making preparations for the purpose of committing dacoity. No conversation of the appellants was heard by this witness. His testimony does not show that the country made pistols, cartridges and jute bombs were sealed immediately after effecting seizure from the appellants. Even the seizure memo Exs. P.1, P.2, P.4 and P.5 does not show that the above mentioned country made pistols, cartridges, sword like knife and jute bombs were sealed."

85.1 In the same decision of **Santosh Kumar and Etc.** (supra), the observation is about the verification of the secret information by the independent witness and the

NEUTRAL CITATION
2026:GUJHC:23883

spot reported of the accused person conversing in making preparation to commit dacoity, it was recorded as under:-

> "6. ..... Raznamcharana Ex.P.14 dated 17-4-2004 written by Inspector Ramesh Pandey PW7 clearly shows that Constable Dhanush Kumar Pandey PW4 and independent witnesses Pramod Kumar Patel PW1 and Bijuram Yadav PW2 were sent to the spot in complete darkness as advanced party to verify the secret information received by him and they had after verifying from the spot reported that 6-7 persons were conversing and making preparations to commit dacoity. However, no such evidence has been adduced by the prosecution. The testimony of Dhanush Kumar Pandey PW4 is wholly unreliable in view of his statement in Paragraph 8."

86. In **Subhash Hariram Rajbhar & Ors.** (supra), the case was about accused making voluntary statement before the police that was recorded in presence of two panchas. The accused was ready to show the place where they about to commit dacoity. Such statement or confession before the police was found inadmissible under Sections 25 and 26 of the Evidence Act and further the statement also did not pass the rigors of Section 27 of the Evidence Act since it did not lead to any discovery, nor it was

NEUTRAL CITATION
2026:GUJHC:23883

distinctly related to any facts. The necessary observation is recorded hereinbelow:-

> “11. ..... If the accused states before the police that he and other accused had planned and prepared to commit dacoity at a particular place, that amounts to confession of the offence punishable under Section 399 and 402 of the I.P.C. Under Section 25 of the Evidence Act "No confession made to a police officer, shall be proved as against a person accused of any offence." Under Section 26 of the Evidence Act "No confession made by any person whilst he is in the custody of a police officer, unless it be made in the immediate presence of a Magistrate, shall be proved as against such persons." It is not the case of the prosecution that when the accused no.1 Subhash made the confession recorded in the memorandum Exhibit 20 and panchanama Exhibit 21, any Magistrate was present. Therefore, confession made by the accused no.1 Subhash is hit by the provisions of Section 25 and 26 of the Evidence Act and it would be inadmissible in evidence. Section 27 of the Evidence Act is however, an exception or a proviso to Sections 25 and 26 of the Evidence Act. While a confession made before the police or while in police custody is inadmissible under Sections 25 and 26 of the Evidence Act, when any fact is deposed to as discovered in consequence of information received from a person accused of any offence, in the custody of a police officer, so much of such information whether it amounts to a confession or not, as relates distinctly to the fact thereby discovered, may be proved. Therefore, only that part of

NEUTRAL CITATION
2026:GUJHC:23883

> the information, which may be in the nature of confession, is admissible which relates distinctly to the discovery of fact which is admissible under the law. If on the basis of information given by the accused no.1 police would have discovered some fact relevant for this case, that statement would be admissible in evidence under Section 27 of the Evidence Act. However, no recovery of any material was made nor any fact was discovered as a result of the alleged confession or information given by the accused no.1. Alleged statement made by the accused no.1 before the police and panchas is a confession of the offence simplicitor without leading to any discovery. Therefore, in my considered opinion, the said statement or confession was hit by Sections 25 and 26 and is inadmissible under the law. It could not be admitted in evidence under Section 27 because it did not lead to any discovery nor it was distinctly related to discovery of any fact."

87. In the case of **Lal Bahadur Choudhary and Anr.** (supra), the Court had dealt with the provision of Sections 399 and 402 of IPC and has noted in Paragraph 23 as under:-

> "23. It is pertinent to note that Section 399 of the Indian Penal Code deals with making preparation to commit dacoity and Section 402 of the Indian Penal Code deals with assembling for purpose of committing dacoity. The offence under Section 402 of the Indian Penal Code is complete as soon as five or more persons assemble together for the purpose of committing a dacoity.

NEUTRAL CITATION
2026:GUJHC:23883

> Preparation to commit dacoity may take place before or after the dacoits assemble together. Preparation consists in devising or arranging the means necessary for the commission of an offence. Though, offence falling under Section 399 and 402 of the Indian Penal Code involve almost similar ingredients, the difference is that under Section 402 of the Indian Penal Code mere assembly without any preparation is enough to attract the offence, whereas Section 399 of the Indian Penal Code is attracted only if some additional steps are taken in the course of preparation."

87.1 In the same judgment of **Lal Bahadur Choudhary and Anr.** (supra), the Court found it difficult to believe the assembly of the accused at a conspicuous place with the intention of committing a dacoity and had also noted that though the articles may have been seized from the possession of the accused persons, it cannot be said that the said weapons would be utilized only for the purpose of committing dacoity and not for the other offence. The relevant observations are made in Paragraph 24 as under:-

> "24. As per the prosecution evidence, the place of occurrence was quite close to the place where dance program Patna High Court CR. APP (SJ) No.183 of 2006 dt.27-08-2025 was going on. It is difficult to believe that appellant no. 1 with other accused

NEUTRAL CITATION
2026:GUJHC:23883

> persons would have assembled at such a conspicuous place with the intention of committing a dacoity and would take such a grave risk. The statement of accused persons before the police, who were caught hold by the police party that they were going to commit a dacoity being clearly inadmissible has to be excluded from consideration. The possibility that accused persons may have collected for the purpose of committing some other offence cannot be safely eliminated. It cannot be said that the articles seized from possession of the co-accused persons can be utilized only for the purpose of committing dacoity and for no other offence. The prosecution must have proved from the evidence directly or indirectly or from attending circumstances that the accused persons had assembled for no other purpose than to make preparation for commission of dacoity."

87.2 In the same judgment of **Lal Bahadur Choudhary and Anr.** (supra), the reference was made about non-production of the seizure-list and invocation of Section 106 of the Evidence Act. The observations read in Paragraph 25 as under:-

> "25. Though, merely because independent witnesses were not examined, the evidence of the official witnesses cannot be discarded. Even if the prosecution has successfully established that the appellant along with four other persons assembled in a lonely place i.e. sugarcane field in the odd hours of night i.e. around 1.30 A.M. on 09.11.1987 from possession of co-accused

NEUTRAL CITATION
2026:GUJHC:23883

> persons arms were seized, in my humble view, that by itself cannot be sufficient to hold that the appellant no. 1, from whom no arms were recovered, had assembled there for the purpose of committing dacoity or was making preparation to accomplish that object. It cannot be said that the articles seized from the possession of the co-accused persons can be utilized only for the purpose of committing dacoity and for no other offence. As stated above, neither seizure-list was prepared nor seized material objects were produced in the Trial Court by the prosecution and seizure-list witnesses were also withheld by the prosecution. The aid of Section 106 of the Evidence Act can be taken in criminal trial only when the prosecution has led evidence which, if believed, will sustain conviction or which makes out a prima facie case. Unless this is done, no burden of proving anything would lie on the accused. If there is any fallacy in explaining his position on the part of the appellant no. 1, that would not absolve the prosecution from its primary obligation to make out a prima facie case under Sections 399, 402 and 307/34 of the Indian Penal Code against the appellant no.1."

88. In the case of **Jasbir Singh @ Javri @ Jabbar Singh, (supra),** the reference was about the secret information about dacoity received by police personnel, and the Hon'ble Supreme Court also dealt with Sections 399 and 402 of the IPC and Section 25 of the Arms Act, 1959. The Hon'ble Supreme Court has, after considering the facts of

NEUTRAL CITATION
2026:GUJHC:23883

the case, put the ultimate findings in following terms:-

> "12. Strangely, even after observing as above, the High Court has believed the prosecution story in respect of offences punishable under Sections 399 and 402 IPC, and one in respect of offence punishable under Section 25 of Arms Act. The High Court has erred in law in not taking note of the following facts apparent from the evidence on record: -
>
> (i) In a day light incident at 1.20 p.m. within the limits of City Police Station, Karnal, there is no public or any other independent witness of the arrest of the appellant along with other accused from the place of incident nor that of the alleged recovery of fire arm said to have been made from two of them. (It is not a case where arrest or recovery has been made in the presence of any Gazetted Officer.)
>
> (ii) Complainant (PW-6) has himself investigated the crime, as such, the credibility of the investigation is also doubtful in the present case, particularly, for the reason that except the police constables, who are subordinate to him, there is no other witness to the incident.
>
> (iii) It is not natural that the six accused, four of whom were armed with deadly weapons, neither offered any resistance nor caused any injury to any of the police personnel before they are apprehended by the police.
>
> (iv) It is strange that all the accused were wearing blue shirts, as if there was a

NEUTRAL CITATION
2026:GUJHC:23883

uniform provided to them.

(v) It is hard to believe that the appellant and three others did not try to run away as at the time of the noon they must have easily noticed from a considerable distance that some policemen are coming towards them. (It is not the case of the prosecution that police personnel were not in uniform.)

13. In view of the above facts and circumstances, which are apparent from the evidence on record, we find that both the courts below have erred in law in holding that the prosecution has successfully proved charge of offences punishable under Sections 399 and 402 IPC, and one punishable under Section 25 of Arms Act against appellant Jasbir Singh @ Javri @ Jabbar Singh, beyond reasonable doubt. In our opinion, it is a fit case where the appellant is entitled to the benefit of the reasonable doubt, and deserves to be acquitted."

89. In the case of **Chaturi Yadav** (supra), the Hon'ble Supreme Court of India was finding it difficult to believe that the appellants would assemble at such a conspicuous place with intention of committing a dacoity and would take such a grave risk. Finding no legal evidence to support the charge under Sections 399 and 402 of the IPC by allowing the appeal acquitted the accused. The Hon'ble Supreme Court has made the

NEUTRAL CITATION
2026:GUJHC:23883

necessary reference in Paragraph 4:-

> “4. The Courts below have drawn the inference that the appellants were guilty under both the offences merely from the fact that they had assembled at a lonely place at 1 A.M. and could give no explanation for their presence at that odd hour of the night. Mr. Misra appearing for the appellant submitted that taking the prosecution case at its face value, there is no evidence to show that the appellants had assembled for the purpose of committing a dacoity or they had made any preparation for committing the same. We are of the opinion that the contention raised by the learned counsel for the appellants is well founded and must prevail. The evidence led by the prosecution merely shows that eight persons were found in the school premises. Some of them were armed with guns, some had cartridges and others ran away. The mere fact that these persons were found at 1 A.M. does not, by itself, prove that the appellants had assembled for the purpose of committing dacoity or for making preparations to accomplish that object. The High Court itself has, in its judgment, observed that the school was quite close to the market, hence it is difficult to believe that the appellants would assemble at such a conspicuous place with the intention of committing a dacoity and would take such a grave risk. It is true that some of the appellants who were caught hold of, by the Head Constable are alleged to have made the statement before him that they were going to commit a dacoity but this statement being clearly inadmissible has to be excluded from consideration. In this view of the matter,

NEUTRAL CITATION
2026:GUJHC:23883

> there is no legal evidence to support the charge under Sections 399 and 402 against the appellants. The possibility that the appellants may have collected for the purpose of murdering somebody or committing some other offence cannot be safely eliminated. In these circumstances, therefore, we are unable to sustain the judgment of the High Court."

90. For the conviction under Section 25(1B)(a) of the Arms Act, the reliance has been placed on the document Exh.27, which was given by the Scientific Officer A.P. Jani of the FSL Department of the Gujarat State dated 18.12.2003. The Muddamal was received by the FSL on 26.06.2003. It is required to be noted that no ballistic report of the seized Tamancha is on record. The sanction, which is necessary for prosecuting the accused under the Arms Act was given by Joint Police Commissioner, Crime Branch, Ahmedabad City which is dated 25.08.2003. As referred hereinabove, even if the arms were proved to be in the possession of the accused, it cannot be countenance of the fact that the weapon was with the accused for the purpose only and only for dacoity. The intention of the accused would have been different by holding the weapons they may have planned for

NEUTRAL CITATION
2026:GUJHC:23883

commission of some other offence.

91. The prosecution has failed to prove their case beyond all reasonable doubt. The learned Sessions Judge had raised the following points for determination to answer the points in affirmative:-

> "(1) Does the prosecution prove beyond reasonable doubt that the accused or any one or more of them have entered into a conspiracy and had started preparation for looting the petrol pump known as Shahid Veer Petrol Pump and had thereby committed an offence punishable under Section 399 IPC?
>
> (2) Does the prosecution prove beyond reasonable doubt that the accused Nos.1 to 3 being armed with deadly weapons like revolver without any licence or permit in that regard have committed an offence punishable under Section 25(1B)(a) of the Arms Act?
>
> (3) Does the prosecution prove beyond reasonable doubt that the accused or any one or more of them have committed an offence punishable under Section 135(1) BP Act?
>
> (4) Does the prosecution prove beyond reasonable doubt that the accused or any one or more of them have committed any offence under any law for the time being in force?

NEUTRAL CITATION
2026:GUJHC:23883

(5) What order and what judgment?”

92. On examination and analysis of the evidence of the witnesses, it appears that the learned Sessions Judge has erred in considering that the prosecution has, beyond reasonable doubt, proved issue no.1 in affirmative. The learned Sessions Judge had committed error in formulating the point no.1, when the case was under Section 399 of the IPC and when the mandate of law is to prove the offence by accused as five or more. The learned Sessions Judge had, in contradiction to the provision of Section 391 of the IPC, had analysed the case with reference to the accused as anyone or more of them having entered into conspiracy and had analysed the facts raising the point for determination, considering the conspiracy of one or more and preparation of one or more for looting the petrol pump, known as Vir Sahid Petrol Pump for commission of the offence under Section 399 of IPC. The learned Trial Court Judge failed to appreciate the requirement for the preparation of commission of dacoity by five or more persons conjointly, and the learned Trial Court Judge has failed to formulate

NEUTRAL CITATION
2026:GUJHC:23883

the issue accordingly making it necessary for the prosecution to prove the preparation for commission of dacoity by five or more persons.

93. In the overall appreciation of the facts with the evidence in the form of testimony of the police witnesses and the Panchas, the case of the prosecution cannot be believed since the information received had not been recorded in the police station diary as 'Janva Jog' entry, nor such information was recorded in the personal diary of any of the police witnesses. The privilege under Section 125 of the Evidence Act cannot be claimed by the leader of the raiding party PW2, as the leader, had not shielded the informant from any other police officers as a team member, nor before the Panchas. The identity of the informant was exposed by the leader of the raiding party to all the members of the raiding team as well as the Panchas. The information alleged to have been provided by the informant had not been verified to know whether the informant was harbouring any enmity against the accused, who as proved by the Investigating Officer, were all in the profession as diamond cutters. The information

NEUTRAL CITATION
2026:GUJHC:23883

given, stated that the accused already had made plans and preparations for dacoity, thus, there was no necessity for any raid to be launched at Natraj Hotel and it would be impossible to believe that the accused persons would gather in a place, where the hotel had high frequency of customers and the surrounding place had offices of travel agents, and it was a public road. The seizure list was not issued to the accused. On personal search, no money or any other document were found from the accused, which also adds, to find it difficult to believe the story of the prosecution. The Panchas have not corroborated the prosecution police witnesses. In case of raid, the Panchas of the raid have to depose the whole fact and the sequence of the incident, which they had observed; while in the present case, none of the Panchas could corroborate the police witnesses. Further, the Panchas have not proved the presence of five accused at the place of incident. They could give evidence for only two accused. The story of the prosecution of ‘Munno’ being present along with the four apprehended accused and ‘Munno’ escaping the place, by mingling in the public also becomes hard to believe

NEUTRAL CITATION
2026:GUJHC:23883

when there were many police persons present there in the team. The Investigating Officer could not prove the fact that the named police officers had followed ‘Munno’ to apprehend him. Though the accused were found with the weapons as country-made pistol and knife, the fact requires corroboration by the evidence of the police witnesses and the Panchas that the police and the Panchas had given their search prior to apprehending the accused when the fact has come on record that all the police witnesses were holding the weapons with them. The prosecution case also becomes doubtful since none of the accused had resisted the police or caused any injury to any of the police personnel. The police has miserably failed to prove the presence of five or more persons to have made preparation for the commission of dacoity. The Investigating Officer’s charge-sheet also creates a gloomy picture, where four other persons including ‘Munno’ were shown in column no.2 of the charge-sheet. The police could not verify the identity of ‘Munno’ as well as other three who were shown in column no.2 of the charge-sheet. Further, the Investigating Officer’s attitude also becomes partisan towards the

NEUTRAL CITATION
2026:GUJHC:23883

informant since as the leader of the raiding team had not conveyed the message of the information received to the superior officer, nor had communicated the superior officer about the constitution of their team before going on raid. Mere recovery of the weapons from the accused would not be suffice to prove that they had gathered to make plan and preparation for dacoity. The accused would have gathered for any other purpose apart from dacoity, when the law mandates that the assemblage of five or more persons conjointly were making preparations for the commission of dacoity. The prosecution has no other option, but to prove the identity of atleast five persons. Here, the trial was only against four. The escaped person ‘Munno’ could not be identified by the police. His whereabouts could not be known. Hence, in absence of proving presence of five, no case under Section 399 of the IPC could be believed.

94. In view of the analysis of the evidence and the reasons given hereinabove with the reference of the case laws, it can be definitely concluded that the prosecution had failed to prove the case beyond all reasonable doubt. The

NEUTRAL CITATION
2026:GUJHC:23883

accused are required to be acquitted since the case under Section 399 of IPC has not been proved against them. As the case is of acquittal of the accused, there would not be any ground to appreciate for the enhancement of the sentence, prayed by the State.

95. In view of the above discussion, Criminal Appeal no.412 of 2005 and Criminal Appeal no.715 of 2005 filed by the appellants – original accused are allowed. Criminal Appeal no. 1139 of 2005 filed by the State is dismissed. The judgment and order of conviction and sentence dated 28.02.2005 passed by the learned Additional Sessions Judge, Ahmedabad City in Sessions Case no.51 of 2004 is set aside. The appellants – original accused are acquitted of all the charges leveled against them. Bail bond stands discharged. Registry is directed to send the record and proceedings back to the concerned Trial Court forthwith.

(GITA GOPI,J)

Maulik